

FRANK R. RECKER, ESQ (Pro Hac Vice)
recker@ddslaw.com
FRANK R. RECKER & ASSOCIATES, CO., L.P.A.
1850 San Marco Road, Suite A
Marco Island, FL 34145-3014
Phone: 239.642.4704

ANN TAYLOR SCHWING, ESQ. (#91914)
BEST BEST KRIEGER LLP
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Phone: 916.551.2098

MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER (SBN 113973)
980 9th Street, Suite 1700
Sacramento, CA 95814
Telephone: (916) 553-4000
E-Mail: kcm@mgsllaw.com

Attorneys for Plaintiffs

KAMALA D. HARRIS, Attorney General
of the State of California
ARTHUR D. TAGGART
Lead Supervising Deputy Attorney General
JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
Sacramento, CA 94244-2550
Telephone: (916) 324-6292
jeffrey.phillips@doj.ca.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL L. POTTS, D.D.S., and THE) CASE NO: S-03-0348 JAM DAD
AMERICAN ACADEMY OF IMPLANT)
DENTISTRY,) **STIPULATION AFFIXING AMOUNT OF**
Plaintiffs,) **COSTS AND FEES;**
ORDER ON STIPULATION

v.)

BRIAN STIGER, in his Official Capacity as)
Director, California Department of)
Consumer Affairs, et al.,)

Defendants.)

1 The parties stipulate as follows:

2 **RECITALS**

3 A. On October 15, 2010, after three days of trial and the close of Defendants'
4 case, the Court granted Plaintiffs' motion under Federal Rule of Civil Procedure 52(c) and ruled
5 in Plaintiffs' favor on each of Plaintiffs' three claims.

6 B. On November 18, 2010, the Court entered final judgment (Doc. #235),
7 (1) declaring Section 651(h)(5)(A) unconstitutional both on its face and as applied to Plaintiffs,
8 (2) enjoining "Defendants, and all persons under the control or supervision of Defendants, from
9 implementing, applying, or otherwise enforcing the provisions of Section 651(h)(5)(A)," and
10 (3) providing that the matter of attorney's fees will be handled by motion in accordance with
11 Local Rule 293.

12 C. On December 2, 2010, Plaintiffs filed a "Bill of Costs" (Doc. #238),
13 seeking \$13,248.66 in costs, which amount was comprised of \$9,012.90 in costs previously
14 awarded by the Court (Doc. #123) as well as \$4,235.76 in costs incurred since the Court's June
15 20, 2005 order awarding costs. Defendants did not oppose Plaintiffs' "Bill of Costs."

16 D. On January 5, 2011, Plaintiffs moved for \$1,072,047 in attorney's fees and
17 litigation expenses (Doc. #242), which amount was comprised of \$315,240.01 in fees and
18 expenses previously awarded by the Court (Doc. #123) as well as \$756,806.99 in fees and
19 expenses incurred since the Court's June 20, 2005 order awarding those fees and expenses.

20 E. On February 9, 2011, Defendants filed their opposition to Plaintiffs'
21 attorney's fee motion (Doc. #250), arguing that plaintiffs' fee request should be reduced by
22 approximately \$112,000.

23 F. On February 16, 2011, Plaintiffs filed a reply brief in support of their
24 attorney's fees motion (Doc. #253), in which Plaintiffs claimed an additional \$7,105 in fees (fees
25 incurred since January 5, 2011), bringing the total amount of the requested fees and expenses
26 (but not including "costs" as addressed in Recital C) to \$1,079,152.

27 G. After extensive negotiations, the parties have agreed to settle and resolve
28 the issues concerning Plaintiffs' costs (Doc. #238) and Plaintiffs' Motion for Attorneys' Fees

(Doc. #242); specifically, in exchange for Defendants' agreement to dismiss their appeal, Plaintiffs have agreed to accept fees and costs in an amount less than the aggregate amount sought in the aforementioned filings, and Defendants have agreed to fix the fees/costs at the agreed-upon amount.

Now, therefore, the parties enter into the following stipulation:

STIPULATION

The parties, by and through their respective counsel, stipulate and agree as follows:

1. In light of the fact Defendants did not challenge or contest Plaintiffs' "Bill of Costs" (Doc. #238), the Court may enter an order awarding Plaintiffs \$13,248.66 in costs;

2. In light of the parties' compromise on Plaintiffs' motion for attorneys' fees and expenses, the Court may also enter an order granting Plaintiffs' pending motion for attorney's fees and expenses in the amount of \$986,004.25;

3. In light of the fact that Defendants have previously paid Plaintiffs \$324,252.91 in fees and costs pursuant to an earlier order of the Court (Doc. #123), the Court may enter an order applying that \$324,252.91 as an offset against the aggregate amount of costs and fees to be awarded here upon the parties' stipulation (\$999,252.91), such that, in addition to the \$324,252.91 that Defendants have already paid Plaintiffs, Defendants must pay only an additional \$675,000;

4. Defendants agree to pay that \$675,000 within 150 days of the entry of an order on this Stipulation. Defendants shall pay that amount by check made payable to the "American Academy of Implant Dentistry." Defendants shall deliver that check to Kenneth C. Mennemeier, Mennemeier, Glassman & Stroud LLP, 980 9th Street, Suite 1700, Sacramento, CA 95814. Defendants agree that, if Defendants do not pay this amount within 150 days of the date on which the Court enters an order on this Stipulation, interest will accrue thereafter (i.e., after the 150th day following the date on which the Court enters an order on this Stipulation) on the \$675,000 at the rate of 9% per annum until the date of payment; and

///

5. The Court shall retain full subject matter and personal jurisdiction to enforce the Judgment (Doc. #235) and the parties' agreement, as set forth in both this Stipulation and in the parties' separate written agreement.

Dated: April 22, 2011

MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER

By: /s/ Kenneth C. Mennemeier
Kenneth C. Mennemeier
Attorneys for Plaintiffs

Dated: April 22, 2011

EDMUND G. BROWN JR.
Attorney General of the State of California

By: /s/ Jeffrey M. Phillips
Jeffrey M. Phillips
Deputy Attorney General, Attorneys for Defendants

ORDER

DATED: April 26, 2011

/s/ John A. Mendez
U. S. DISTRICT JUDGE